

## REMARKS

The present Office Action addresses and rejects claims 1-25. Reconsideration is respectfully requested in view of the following.

### *Rejections Pursuant to 35 U.S.C. § 103*

Claims 1-3, 5-7, 10-16, and 21-25 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,195,956 of Stockmeier ("Stockmeier") in view of PCT Publication No. WO 99/58066 of Altman et al. ("Altman"). Applicant respectfully disagrees.

Independent claim 1 recites a tissue extraction and maceration device that includes an outer tube having an open distal end adapted to be placed on a tissue surface, and a shaft rotatably disposed within the outer tube. The shaft is movable between a first, proximal position in which the shaft is fully disposed within the outer tube, and a second, distal position in which a portion of a distal end of the shaft extends through the opening in the distal end of the outer tube. Claim 1 also recites a tissue harvesting tip formed on the distal end of the shaft and effective to excise a tissue sample, and a cutting member coupled to the shaft at a position proximal to the tissue harvesting tip and effective to macerate a tissue sample excised by the tissue harvesting tip.

The Examiner argues that Stockmeier discloses the claimed invention except for a cutting member disposed proximal to a harvesting tip and effective to macerate a tissue sample excised by the tissue harvesting tip. The Examiner thus relies on Altman to remedy the deficiencies of Stockmeier. Applicant respectfully disagrees.

At the outset, Stockmeier cannot be modified to include a cutting member located proximal to a harvesting tip, as such a modification would render the device inoperable. As shown in Figures 1 and 2, Stockmeier discloses a cutting device having an outer tube (1) with a rotary cutting tool (5) movably disposed within a distal end thereof. An inner tube (13) extends through the outer tube (1) and it includes a bearing (7) that receives a shaft (3) of the cutting tool (5). In use, the shaft (3) slides relative to the bearing (7) to allow the cutting tool (5) to move in

and out of the outer tube (1). If the shaft (3) of Stockmeier were modified to include a second cutting member located proximal to the cutting tool (5), as taught by Altman and suggested by the Examiner, the second cutting member would prevent the shaft (3) from moving relative to the bearing (7). As a result, the device would be inoperable for its intended purpose.

Moreover, it would not have been obvious to add a cutting member to Stockmeier because Stockmeier's device is not used for harvesting tissue, and thus the cutting member would serve no purpose. Stockmeier does not teach or even suggest collecting tissue; it only discloses destroying a thrombosis in a blood vessel. In fact, the device does not include a lumen for receiving and collecting tissue. As shown in Figures 1 and 2, the cutting tool (5) is separated from the remainder of the outer tube (1) by a partition (17). The partition (17) allows fluid to flow through the inner tube (13) to drive the turbine, and then the fluid is returned between the inner and outer tubes, as indicated by the directional arrows. Thus, the partition wall (17) prevents any tissue from being collected through the inner lumen of the device. Accordingly, it would not have been obvious to modify Stockmeier to include a second cutting member located proximal to the cutting tool (5) because such a modification would serve no purpose.

Accordingly, independent claim 1, as well as claims 2-3, 5-7, 10-16, and 21-25 which depend therefrom, distinguish over Stockmeier in view of Altman and represent allowable subject matter.

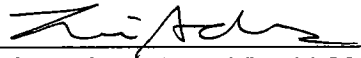
Dependent claims 4, 8-9, and 17-20 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Stockmeier in view of Altman and in further review of one of various references set forth in the Office Action. At least for the reasons explained above, no person having ordinary skill in the art would modify Stockmeier to include a second cutting member located proximal to the harvesting tip. According, the remaining cited references cannot cure the deficiencies of Stockmeier. Claims 4, 8-9, and 17-20 are therefore allowable at least because they depend from an allowable base claim.

***Conclusion***

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

Date: May 22, 2007



Lisa Adams, Reg. No. 44,238  
Attorney for Applicant(s)

Nutter McClennen & Fish LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210  
Tel: (617)439-2550  
Fax: (617)310-9550

1627572.1